

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO:

864/198  
/1997

Shri Yenulal Babulal Mohite

Driver,

R/o. C.R. Hospital,

Khalasi Line,

Nagpur-400 001.

.. Applicant.

Versus

1. Union of India,

through

Divisional Railway Manager (Mech)

South Eastern Railway,

Nagpur.

2. The Assistant Mechanical

Engineer,

South Eastern Railway,

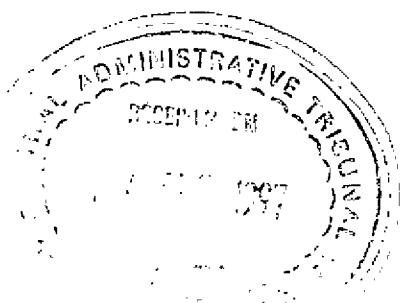
Nagpur.

3. Dy. General Manager,

South Eastern Railway,

Nagpur.

1. Particulars of order against which  
this application is made:



The applicant challenges and impugnes order dt. 3-7-95 whereby a punishment has been inflicted upon the applicant by withholding the next increment of the applicant for a period of 2 years 6 months which was due on 1-3-1996 and order dt. 29-11-95 whereby the applicant's appeal has been dismissed and order of punishment has been confirmed. Copies of order dt. 3-7-95 and 29-11-95 are hereby annexed and marked as Ex. 'A' and 'B' respectively. The applicant's grievance is that he while working as Driver was called upon to drive a vehicle of the make Swaraj Mazda and when being bestowed the responsibility of maintaining the condition of the said vehicle on account of negligence on the part of the maintenance department of the respondents have some damage being caused to the vehicle inspite of intimation to the respondents given by the applicant of there being a defect which ought to have been removed but which was not removed because of lack of interest and diligence on the part of the respondents and which blame has been cast upon the applicant as a consequence of which the applicant was issued with a chargesheet for minor punishment and was inflicted with minor punishment and even though applicant insisted and demanded for

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conduct of an enquiry the same was arbitrarily refused and the respondents without according opportunity to the applicant and in breach of principles of natural justice inflicted punishment upon the applicant which is illegal, untenable and bad in law and requires interference by this Hon'ble Tribunal.

2. JURISDICTION:

The applicant declares that the subject matter of this OA is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION:

The applicant declares that there is a delay in filing this OA and therefore the applicant is preferring an independent application seeking condonation of delay by attributing specific reasons and extenuating circumstances which prevented the applicant from approaching this Hon'ble Tribunal in time.

4. FACTS OF THE CASE:

- 4.1 The applicant who is appointed and working as a Driver with the respondents enjoys an unblemished service record and has been discharging his duties and functions to the utmost satisfaction of his superiors with

no complaints from any quarters and has been very diligent and malicious in discharge of his duties.

4.2 The applicant states that in the role of a driver according to the designation which itself is self descriptive the applicant is required to operate a vehicle with responsibility to ply vehicle of the respondents. It is specifically stated that the duties and responsibilities of maintaining the vehicle being operated by the applicant does not lie on his shoulders. The responsibilities of maintenance and upkeep of the vehicle is undertaken by a separate independent department upon whom specific responsibility is devolved by virtue of which they are required to maintain the vehicle. In the same flow the applicant hasten to add that it does fall within his ambit to keep the persons responsible for maintaining the vehicle inform as to there being any prospective likelihood of the vehicle developing any defect or there being any cause that would at a later stage being about a defect in the vehicle whose operation is manned by the applicant.

4.3 The applicant states that on 12-6-95 he was served with a memorandum wherein the respondents sought to take action against him

under the Railway Servant (Discipline and Appeal) Rules, 1968 levelling a statement of imputation of misconduct alleging that the applicant has conducted gross negligence of duty in which heavy damages were caused to vehicle No.MWZ-5323 while on run on 29-5-95. The damages could have been avoided or minimised if the applicant was careful and vigilant and the applicant was called upon to explain why disciplinary action should not be taken against him under the said rules. The applicant states that he was in a state of shock on receipt of the said memorandum as he was absolutely unaware of how any charge of negligence could be attributed to him when no responsibility of maintenance of the said vehicle devolved upon him. However, before he could revert back by placing a proper reply explaining the details that would absolve him of any such charge the respondents in a short span of 21 days in utmost haste passed an order of punishment in a cyclostyled form the applicant was informed that after consideration of his explanation the respondents have decided to him to be guilty wherein the applicant was denied of being accorded with any opportunity to present his defence. Copy of memorandum dt. 12-6-95 is hereby annexed and marked as Ex.C.

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4.4 The applicant states that on 17-7-95 the applicant immediately preferred an explanation wherein he brought out all the details with regard to their chargesheet and further pointed out that on 4-7-95 itself he had tendered an explanation wherein he had categorically denied all the charges levelled against him and had expressed in specific terms that the chargesheet issued was absolutely vague and beyond the comprehension of the applicant calling for a detailed explanation as to how he would respond to explain. The applicant thus invited the attention of the respondents vide his explanation dt. 17-7-95 stating inter-alia that a grave irregularity have been committed whereby without taking into consideration the respondents had nailed the charge against him and inflicted upon him a punishment which was absolutely unjustified. Copies of letter dated 4-7-95 and explanation dt. 17-7-95 are hereto annexed and marked as Ex. 'D' and 'E' respectively.

4.5 The applicant states that curiously enough as is evident by virtue of the chronology of events that have occurred it can be safely

established that the respondents acted in a pre-determined fashion harbouring a specific intention to nail the charge against the applicant and thus instead of taking cognizance of the explanation dt. 17-7-95 respondents disposed of the same treating it as an appeal and stating inter alia that the punishment inflicted shall be maintained. Copy of order issued by the respondents dt. 19.9.95... is hereby annexed and marked as Ex. 'F'.

- 4.6 The applicant immediately addressed a letter on 9-10-95 wherein he explained the entire situation and sought indulgence of the respondents to direct appointment of an independent enquiry officer to enquire into the entire affair. He also produced certificate dt. 3-9-95 issued by the Anwar Auto Garage who were the authorised mechanic appointed by the respondents to maintain and repair the said vehicle whose driver the applicant was and who in categorical term is evident from the contents of the certificate dt. 3.9.95 stated with respect to vehicle No. MWZ-5323 that the applicant as the driver of the said vehicle was in no way responsible for the damage caused to the said vehicle.
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The respondents once again in a cursory fashion without applying any mind considered the said appeal vide their order dated 29-11-95 at Ex. 'B' and rejected the applicant's appeal. Copy of appeal dt. 9-10-95 is hereto annexed and marked as Ex. 'G' and certificate dt. 3-9-95 is hereto annexed and marked as Ex. 'H'.

4.7 The applicant states that even inspite of such disheartening developments the applicant once again sought indulgence of the respondents and addressed a letter dt. 29-1-96 urging the respondents to absolve him of the charge and stating that he was not in any way liable to accept the punishment inflicted upon him as the same was unjustified on account of the explanation and the prevailing circumstances. The respondents chose to remain silent on the issue and the applicant therefore is compelled to approach this Hon'ble Tribunal to seek justice.

4.8 The applicant states that as a driver he was called upon to maintain a log book which is in possession of the respondents and is maintained and checked and supervised by the respondents as to whether it is regularly entered into or not which clearly establishes that on the fateful day when the alleged

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charge of causing damage to the said vehicle occurred the applicant had made specific entry in the log book with regard to the impending threat of there being damage caused to the vehicle as a consequence of various developments he observed and as a consequence of the vehicle not starting. Yet inspite of such material evidence being available on record along with respondents the respondents chose to nail the charge upon the applicant which is untenable. Copy of letter dt.29-1-96 and extracts of log book are hereto annexed and marked as Ex. 'I' and 'J' respectively.

4.9 . In the conspectus of facts and circumstances narrated above the applicant most humbly and respectfully prays that this is a fit case for this Hon'ble Tribunal to interfere and intervene in order to set at naught the grave injustice.

5. GROUND:

The applicant challenges the legality validity and maintainability of the impugned order on the following among other grounds:

5.1 The applicant submits that it has been established and law in the matter has been crystallised enunciating the time and action without

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granting adequate opportunity no prejudice ought to be caused under any circumstance to anybody. In the present case with undue haste and in a absolute breach of principles of natural justice the respondents without according any opportunity to the applicant to meet the charges arbitrarily and unilaterally inflicted a punishment upon the applicant without taking into consideration his defence and the petition ought to have been allowed on this count alone.

5.2 The applicant states that a minimum period of 30 days is atleast accorded to any delinquent for submitting his defence whenever a chargesheet is served. But in the present case even before the completion of the said period the respondents with undue haste and with a pre-determined view to punish the applicant went ahead and inflicted the punishment which is untenable and bad in law.

5.3 The applicant submits that when the grave lacuna acquired in the process of his statutory right to be accorded with defence it was incumbent upon the appellate authority to set right the said infirmative and in failing to do so the entire proceedings are

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are vitiated and the application deserves to be allowed on this account also.

6. Details of remedies exhausted:

Applicant submits that he has exhausted all the remedies available to him under the service rules.

7. Matters pending before any court

Applicant submits that he has not filed any other application/petition before any other court or Tribunal in India touching the subject matter of this original application.

8. Reliefs sought:

The applicant most humbly and respectfully begs to pray:

- (a) that this Hon'ble Tribunal be pleased to set aside and quash the impugned orders at Annexure 'A' and 'B' and declare the same to be illegal, bad in law and nonest.
- (b) that this Hon'ble Tribunal be pleased to direct the respondents to grant all consequential benefits that would accrue to the applicant as a consequence of quashing the impugned order.

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- (c) saddle the cost of the application on the respondents.
- (d) any other relief/reliefs that this Hon'ble Court may deem fit and proper under the circumstances of the case.

9. Interim relief:  
Not pressed.

10. This application is being filed through an advocate.

11. Details of postal order/DD  
IPO/DD No.:  $\frac{8}{14}$  142707  
Date L 22-8-97

12. List of Annexures: A to J

*Yusuf Karim Singh*  
Counsel for applicant.

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VERIFICATION

I, SHRI YENULAL BABULAL MOHITE

the applicant named do hereby state on solemn  
affirmation that the contents of paras 1 to  
12 above are true to my knowledge and belief  
and have been explained to me in Vernacular  
and I have suppressed no material facts.

Hence verified and signed on  
this 22nd day of August, 1997.

MUMBAI,

Date : 22/8/1997.

*Yashwant Singh*  
Counsel for Applicant.

*[Signature]*  
DEPONENT.